

JAMES M. CHUDNOW

IBLA 81-1018

Decided October 22, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. N-32353.

Set aside and remanded.

1. Notice: Generally -- Oil and Gas Leases: Stipulations -- Rules of Practice: Generally

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James M. Chudnow has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 25, 1981, rejecting appellant's noncompetitive oil and gas lease offer, N-32353.

On March 19, 1981, appellant filed a noncompetitive oil and gas lease offer pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), for land situated in Elko County, Nevada. By decision dated July 9, 1981, BLM required appellant to sign, date, and return certain special stipulations, as a condition precedent to issuance of the lease, within

30 days after receipt of the decision. BLM stated that failure to do so would result in the rejection of appellant's lease offer. The record contains a return receipt card, indicating that appellant received the BLM decision on July 18, 1981. On August 26, 1981, BLM received the signed stipulations. The stipulations were dated August 7, 1981, and enclosed in an envelope postmarked August 18, 1981, in Chicago, Illinois. Appellant's residence was given as Chicago, Illinois. The envelope was directed to the BLM office in Reno, Nevada. In its August 1981 decision, BLM rejected appellant's oil and gas lease offer because the stipulations were not received within 30 days, as required in its July 1981 decision.

In his statement of reasons for appeal, appellant contends that he mailed the signed stipulations "around the '30 days' deadline" and that the failure to submit the stipulations timely was due to "poor mail service." Appellant provides various evidence that mail between Chicago, Illinois, and Reno, Nevada, takes over a week. Appellant does not object to the required stipulations.

[1] It is well established that failure to return special stipulations required by BLM, as a condition precedent to issuance of a noncompetitive oil and gas lease, within the allotted time, properly results in rejection of the lease offer. First Mississippi Corp., 62 IBLA 184 (1982), and cases cited therein.

The deadline for submission of appellant's signed stipulations was August 17, 1981. The record indicates that the stipulations were not mailed until the next day. Thus, mail service was scarcely a causative factor in the failure to timely submit the signed stipulations. Even had the untimely receipt of the stipulations been due to a delay caused by the postal service, the Board has consistently held that a person choosing the means of delivery must bear the consequences of loss or untimely delivery. Derrick Fuller, 56 IBLA 33 (1981), and cases cited therein. Accordingly, we conclude that BLM properly rejected appellant's lease offer.

However, appellant's lease offer was filed over-the-counter. In First Mississippi Corp., supra at 186, we held that in such circumstances the failure to execute stipulations is a curable defect and that "[i]f such a defect is remedied prior to the filing of any junior offers for the lands in question, appellant's offers may be considered with priority as of the time the signed stipulations are received by BLM." Accordingly, in the absence of the filing of an intermediate junior offer, appellant's oil and gas lease offer should be accorded priority as of August 26, 1981, the date of receipt by BLM of his signed stipulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is set aside, and the case is remanded for further action consistent herewith.

James L. Burski  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

